

## FLSA-61

January 24, 1979

This is in further reply to your letter of November 27, 1978, enclosing a copy of a letter from \*\*\* concerning the application of the Federal wage and hour law to employees employed in his pharmacy. \*\*\* is particularly concerned with the way the Wage and Hour Division calculated his annual dollar volume for the purpose of determining if the minimum wage and overtime pay provisions of the law apply to his employees.

The Fair Labor Standards Act is the Federal wage and hour law. An employee who is covered under this law must be paid in accordance with its minimum wage and overtime pay provisions, as discussed in the enclosed Handy Reference Guide, unless specifically exempt. The Act provides for a complete minimum wage and overtime pay exemption for employees of certain retail or services establishments, such as an independently owned and operated pharmacy, that prior to July 1, 1978, had, among other things, an annual dollar volume of less than \$250,000, and after that date had an annual dollar volume of less than \$275,000, exclusive of certain excise taxes.

In order to determine, when there may be doubt \*\*\* were informed by our Area Office \*\*\* was the situation in your constituent's case), whether an enterprise or establishment has an annual gross volume of sales made or business done in excess of the amount specified in the statute, an analysis is made at the beginning of each quarter-year so that the employer will know whether or not the dollar volume tests have been met for the purpose of complying with the law in the workweeks ending in the following quarter year.

The total of the gross receipts from all its sales or business during a 12-month period which immediately precedes the quarter-year being tested will be the basis for analysis. This method, "the rolling quarter method," is used, as intended by the Congress (see S. Rept. 145, 87th Congress first session, Page 38), for computation of annual dollar volumes in all cases when such a computation becomes necessary in order to determine the applicability of the provisions of the Act.

We hope this satisfactorily responds to inquiry. However, if your constituent has any further question concerning this matter, or any other aspect of the Fair Labor Standards Act, please feel free to get in touch with us again.

Sincerely,

Herbert J. Cohen  
Assistant Administrator  
Wage and Hour Division

Xavier M. Vela  
Administrator

Enclosures